

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ANDREA M WILLIAMS, et al.,  
Plaintiffs,  
v.  
APPLE, INC.,  
Defendant.

Case No. 19-CV-04700-LHK

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS**

Re: Dkt. No. 39

Plaintiffs bring this putative class action against Defendant Apple, Inc. (“Apple”). Plaintiffs’ First Amended Complaint (“FAC”) alleges breach of contract, violations of California’s False Advertising Law (“FAL”), and violations of California’s Unfair Competition Law (“UCL”). Before the Court is Apple’s motion to dismiss Plaintiffs’ prayer for injunctive relief and FAL and UCL claims (“motion to dismiss”). ECF No. 39. Having considered the submissions of the parties, the relevant law, and the record in this case, the Court GRANTS in part and DENIES in part Apple’s motion to dismiss. Specifically, the Court GRANTS Apple’s motion to dismiss Plaintiffs’ FAL and UCL claims with prejudice but DENIES Apple’s motion to dismiss Plaintiffs’ prayer for injunctive relief.

1 **I. BACKGROUND**

2 **A. Factual Background**

3 Apple is a corporation incorporated under the laws of California and has its principal place  
4 of business in Cupertino, California. FAC ¶ 8, ECF No. 38. Apple provides cloud storage services  
5 to Apple device users through iCloud, Apple’s cloud service. *See id.* ¶¶ 2, 13–17. iCloud allows  
6 subscribers to “utilize certain Internet services, including storing your personal content (such as  
7 contacts, calendars, photos, notes, reminders, documents, app data, and iCloud email) and making  
8 it accessible on your compatible devices and computers, and certain location based services.” FAC  
9 ¶ 53.

10 According to Plaintiffs, “[o]wners of Apple devices are granted up to 5 GB of iCloud  
11 storage for free. If an Apple device user wishes to store more than 5 GB of data on the cloud  
12 through iCloud, then that user must subscribe to iCloud’s paid service.” FAC ¶ 26. Plaintiffs allege  
13 that “[i]n order to subscribe to iCloud, a user must agree to the iCloud Terms of Service  
14 Agreement.” *Id.* ¶ 28. The relevant portion of the iCloud Terms of Service Agreement (“iCloud  
15 Agreement”) provides the following:

16 *Apple is the provider of the Service*, which permits you to utilize certain Internet  
17 services, including storing your personal content (such as contacts, calendars,  
18 photos, notes, reminders, documents, app data, and iCloud email) and making it  
19 accessible on your compatible devices and computers, and certain location based  
20 services, only under the terms and conditions set forth in this Agreement. iCloud is  
21 automatically enabled when you are running devices on iOS 9 or later and sign in  
22 with your Apple ID during device setup, unless you are upgrading the device and  
23 have previously chosen not to enable iCloud. You can disable iCloud in Settings.  
24 When iCloud is enabled, ***your content will be automatically sent to and stored by***  
25 ***Apple***, so you can later access that content or have content wirelessly pushed to  
26 your other iCloud-enabled devices or computers. ¶

27 *Id.* ¶ 28 (emphasis in FAC). This language appears in a September 16, 2015 version of the iCloud  
28 Agreement and a September 19, 2019 version of the iCloud Agreement. *Id.* ¶ 29; FAC, Exs. 1–2.

Named Plaintiffs Andrea M. Williams and James Stewart bring the suit on behalf of a  
putative class of United States iCloud subscribers (excluding Apple, its employees, and its  
directors) who during the Class Period from August 20, 2015 to the present paid for an Apple

1 iCloud subscription (collectively, “Plaintiffs”). FAC ¶ 44. Williams is a resident and citizen of  
 2 Florida who, in January 2016, “subscribed to Apple’s iCloud service, paid money to Apple for her  
 3 iCloud subscription, and used iCloud to store her data on the cloud.” *Id.* ¶ 11. Stewart is a resident  
 4 and citizen of California who, in August 2015, “subscribed to Apple’s iCloud service, paid money  
 5 to Apple for his iCloud subscription, and used iCloud to store his data on the cloud.” *Id.* ¶ 15. Both  
 6 Williams and Stewart continue to subscribe to iCloud. *Id.* ¶¶ 11, 15. Moreover, Williams and  
 7 Stewart “expect to continue [subscribing] for the immediate foreseeable future, given that they  
 8 have concerns as to the fate of their already stored data if they were to terminate their paying  
 9 subscriptions.” *Id.* ¶ 50.

10 The FAC alleges that Williams and Stewart were not informed by Apple that their data was  
 11 being stored on “non-Apple remote servers and facilities” despite alleged assurances to the  
 12 contrary. *Id.* ¶¶ 12–13. Specifically, Plaintiffs allege that they “bargained for, agreed, and paid to  
 13 have Apple—an entity they trusted—store their data.”<sup>1</sup> *Id.* ¶ 38. According to the FAC, however,  
 14 Apple’s representations were false. “Apple lacked the facilities needed to readily provide the cloud  
 15 storage space being sold to class members through iCloud.” *Id.* ¶ 33. “Unable to provide the cloud  
 16 storage space . . . , Apple breached its iCloud agreement with its subscribers and had these users’  
 17 data stored not by Apple on Apple facilities, but instead turned the users’ digital files to other  
 18 entities, like Amazon and Microsoft[,] for them to store on their facilities.” *Id.* ¶ 34.

19 The FAC alleges that “[h]ad Apple disclosed that, contrary to its contractual representation,  
 20 Apple was not the provider of the cloud storage,” putative class members “would not have  
 21 subscribed to Apple’s iCloud service or would have not agreed to pay as much as [they] did for the  
 22 service.” *Id.* ¶¶ 12–13. The FAC claims that other companies, such as Microsoft and Google, offer  
 23 cheaper cloud storage services than Apple and that Apple’s “price premium” harmed putative class

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24  
 25 <sup>1</sup> Elsewhere, however, the FAC contradicts Plaintiffs’ allegation that they “bargained for” this  
 26 specific provision. Specifically, the iCloud Agreements that Plaintiffs attached to the FAC are  
 27 form contracts that could not be modified and merely allowed Plaintiffs to click an “AGREE”  
 28 button. FAC, Ex. 1 at 1; FAC, Ex. 2 at 1. Nowhere do the FAC or the iCloud Agreements allege or  
 establish that the iCloud Agreements could be modified.

1 members who would have otherwise utilized these cheaper cloud storage alternatives. *Id.* ¶¶ 40–  
2 43.

### 3 **B. Procedural History**

4 On August 12, 2019, Plaintiffs filed the instant putative class action. ECF No. 1 (“original  
5 complaint”). Plaintiffs’ original complaint, like the operative FAC, alleged three causes of action  
6 against Apple: (1) breach of contract, (2) violations of the FAL; and (3) violations of the UCL.  
7 *Compare* Original Compl. ¶¶ 45–66 (three causes of action), *with* FAC ¶¶ 51–75 (same). Plaintiffs  
8 allege that Apple agreed to be the “provider of the [iCloud] Service” and to store putative class  
9 members’ content on Apple’s servers. FAC ¶¶ 48–50. According to Plaintiffs, however, Apple  
10 breached this promise because “storage was provided by non-Apple third parties with whom  
11 neither [Named] Plaintiffs nor class members had bargained.” *Id.* ¶¶ 55–57. Plaintiffs also claim  
12 that Apple violated the FAL and UCL by making the following “false and misleading” claim:  
13 “Apple was the provider of the iCloud cloud storage service and [] class members’ data would be  
14 stored on the cloud by Apple.” *Id.* ¶ 62.

15 Plaintiffs seek relief at law and equity. At law, Plaintiffs seek monetary damages for breach  
16 of contract. *See* FAC at 21 (Prayer for Relief). At equity, Plaintiffs seek restitution under the FAL  
17 and UCL and an injunction “to enjoin Apple from continuing to falsely represent that it is the  
18 provider of the iCloud cloud storage service and requiring Apple to disclose to class members all  
19 entities who store class members’ data on the cloud as part of their iCloud subscription.” *Id.*; *see*  
20 Section III-B, *infra* (discussing equitable nature of FAL and UCL relief).

21 On October 4, 2019, Apple moved to dismiss Plaintiffs’ original complaint. ECF No. 15.  
22 Plaintiffs filed an opposition on October 18, 2020, and Apple filed a reply on October 25, 2019.  
23 ECF Nos. 19, 22. Apple made three arguments especially relevant here. First, Apple argued that  
24 Plaintiffs lacked Article III standing for injunctive relief. ECF No. 15 at 18. Second, Apple argued  
25 that Plaintiffs’ FAL and UCL claims failed to satisfy Federal Rule of Civil Procedure 9(b)’s  
26 heightened pleading requirements. *Id.* at 23–24. Third, Apple argued that “Plaintiffs’ claims under  
27 the FAL and UCL (all prongs) also fail because they are equitable claims and Plaintiffs have an

1 adequate remedy at law.” *Id.* at 25 (capitalization altered).

2 On March 27, 2020, the Court granted in part and denied in part Apple’s motion to dismiss  
3 the original complaint. ECF No. 34. Specifically, the Court granted with leave to amend Apple’s  
4 motion to dismiss (1) Plaintiffs’ prayer for injunctive relief; and (2) Plaintiffs’ FAL and UCL  
5 claims. *Id.* at 26. The Court denied Apple’s motion to dismiss Plaintiffs’ breach of contract claim.  
6 *Id.*

7 As to injunctive relief, the Court agreed with Apple that Plaintiffs lacked Article III  
8 standing to seek an injunction. *See* ECF No. 34 at 13–15. The Court reasoned that Plaintiffs “failed  
9 to allege ‘the real and immediate threat of repeated injury.’” *Id.* at 14 (quoting *Davidson v.*  
10 *Kimberly-Clark Corporation*, 889 F.3d 956, 966 (9th Cir.), *cert. denied*, 139 S. Ct. 640 (2018)).  
11 Specifically, Plaintiffs “d[id] not allege that they are currently paying for iCloud storage or that  
12 they actually intend or plan to purchase iCloud storage again in the future.” *Id.* Thus, the Court  
13 held that “[w]ithout alleging that Plaintiffs are currently *paid iCloud subscribers*—as opposed to  
14 merely utilizing the free five GB of iCloud storage—Plaintiffs have not met their burden of  
15 establishing an injury that is ‘*certainly impending*.’” *Id.* at 15 (emphasis in original) (citation  
16 omitted) (quoting *Davidson*, 889 F.3d at 966).

17 As for the FAL and UCL claims, the Court agreed with Apple that the claims failed to  
18 satisfy Federal Rule of Civil Procedure 9(b)’s heightened pleading requirements. *See id.* at 20–26  
19 (analyzing Rule 9(b)). Given that Rule 9(b) was dispositive, the Court did not reach Apple’s other  
20 argument for dismissing the FAL and UCL claims: that the FAL and UCL claims seek equitable  
21 relief that is duplicative of an adequate remedy at law. *Id.* at 20. Even so, the Court warned that  
22 “failure to cure deficiencies identified herein [*i.e.*, the order granting in part Apple’s motion to  
23 dismiss] *or in Apple’s motion to dismiss* will result in dismissal of the deficient claims with  
24 prejudice.” *Id.* at 26 (emphasis added).

25 On April 27, 2020, Plaintiffs filed the FAC. ECF No. 38. On May 11, 2020, Apple filed the  
26 instant motion to dismiss. ECF No. 39 (“Mot.”). The instant motion again argues that (1) Plaintiffs  
27 lack Article III standing to seek injunctive relief; and (2) FAL and UCL claims seek equitable

1 relief that is duplicative of an adequate remedy at law. *See id.* at 11–16. The instant motion does  
 2 not challenge Plaintiffs’ breach of contract claim. On May 26, 2020, Plaintiffs filed their  
 3 opposition. ECF No. 40 (“Opp’n”). On June 2, 2020, Apple filed its reply. ECF No. 42 (“Reply”).

## 4 **II. LEGAL STANDARD**

### 5 **A. Motion to Dismiss Under Rule 12(b)(1)**

6 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) tests whether the  
 7 court has subject matter jurisdiction. Although lack of “statutory standing” requires dismissal for  
 8 failure to state a claim under Rule 12(b)(6), lack of Article III standing requires dismissal for want  
 9 of subject matter jurisdiction under Rule 12(b)(1). *See Nw. Requirements Utilities v. F.E.R.C.*, 798  
 10 F.3d 796, 808 (9th Cir. 2015) (“Unlike Article III standing, however, ‘statutory standing’ does not  
 11 implicate our subject-matter jurisdiction.” (citing *Lexmark Int’l, Inc. v. Static Control*  
 12 *Components, Inc.*, 572 U.S. 118, 128 n.4 (2014))); *Maya v. Centex Corp.*, 658 F.3d 1060, 1067  
 13 (9th Cir. 2011). A Rule 12(b)(1) jurisdictional attack may be factual or facial. *Safe Air for*  
 14 *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

15 “[I]n a factual attack, the challenger disputes the truth of the allegations that, by  
 16 themselves, would otherwise invoke federal jurisdiction.” *Id.* In resolving such an attack, unlike  
 17 with a motion to dismiss under Rule 12(b)(6), a court “may review evidence beyond the complaint  
 18 without converting the motion to dismiss into a motion for summary judgment.” *Id.* Moreover, the  
 19 court “need not presume the truthfulness of the plaintiff’s allegations.” *Id.* Once the defendant has  
 20 moved to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), the plaintiff bears the  
 21 burden of establishing the court’s jurisdiction. *See Chandler v. State Farm Mut. Auto Ins. Co.*, 598  
 22 F.3d 1115, 1122 (9th Cir. 2010).

23 “In a facial attack,” on the other hand, “the challenger asserts that the allegations contained  
 24 in a complaint are insufficient on their face to invoke federal jurisdiction.” *Safe Air for Everyone*,  
 25 373 F.3d at 1039. The court “resolves a facial attack as it would a motion to dismiss under Rule  
 26 12(b)(6): Accepting the plaintiff’s allegations as true and drawing all reasonable inferences in the  
 27 plaintiff’s favor, the court determines whether the allegations are sufficient as a legal matter to

1 invoke the court’s jurisdiction.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

2 **B. Motion to Dismiss Under Rule 12(b)(6)**

3 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to include “a  
4 short and plain statement of the claim showing that the pleader is entitled to relief.” A complaint  
5 that fails to meet this standard may be dismissed pursuant to Federal Rule of Civil Procedure  
6 12(b)(6). The United States Supreme Court has held that Rule 8(a) requires a plaintiff to plead  
7 “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*,  
8 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content  
9 that allows the court to draw the reasonable inference that the defendant is liable for the  
10 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility standard is not  
11 akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has  
12 acted unlawfully.” *Id.* (internal quotation marks omitted). For purposes of ruling on a Rule  
13 12(b)(6) motion, the Court “accept[s] factual allegations in the complaint as true and construe[s]  
14 the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire &  
15 Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The Court, however, need not “assume the  
16 truth of legal conclusions merely because they are cast in the form of factual allegations.” *Fayer v.  
17 Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (per curiam) (internal quotation marks omitted).  
18 Additionally, mere “conclusory allegations of law and unwarranted inferences are insufficient to  
19 defeat a motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004).

20 **C. Leave to Amend**

21 If a court determines that a complaint should be dismissed, it must then decide whether to  
22 grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend  
23 “shall be freely given when justice so requires,” bearing in mind “the underlying purpose of Rule  
24 15 to facilitate decisions on the merits, rather than on the pleadings or technicalities.” *Lopez v.  
25 Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (alterations and internal quotation marks  
26 omitted). When dismissing a complaint for failure to state a claim, “a district court should grant  
27 leave to amend even if no request to amend the pleading was made, unless it determines that the

1 pleading could not possibly be cured by the allegation of other facts.” *Id.* at 1130 (internal  
2 quotation marks omitted).

3 Accordingly, leave to amend generally shall be denied only if allowing amendment would  
4 unduly prejudice the opposing party, cause undue delay, or be futile, or if the moving party has  
5 acted in bad faith. *Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 532 (9th Cir. 2008). At the  
6 same time, a court is justified in denying leave to amend when a plaintiff “repeated[ly] fail[s] to  
7 cure deficiencies by amendments previously allowed.” *See Carvalho v. Equifax Info. Servs., LLC*,  
8 629 F.3d 876, 892 (9th Cir. 2010). Indeed, a “district court’s discretion to deny leave to amend is  
9 particularly broad where plaintiff has previously amended the complaint.” *Cafasso, U.S. ex rel. v.*  
10 *Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir. 2011) (quotation marks omitted).

### 11 **III. DISCUSSION**

12 The FAC alleges three causes of action against Apple: (1) breach of contract, (2) violations  
13 of California’s False Advertising Law (“FAL”); and (3) violations of California’s Unfair  
14 Competition Law (“UCL”). *Id.* ¶¶ 45-66. In terms of relief, the FAC prays for relief at law and  
15 equity. At law, the FAC seeks monetary damages for breach of contract. *See* FAC at 21 (Prayer for  
16 Relief). At equity, the FAC seeks restitution under the FAL and UCL and an injunction. *Id.*

17 Apple moves to dismiss the FAL and UCL claims and the prayer for injunctive relief, but  
18 not the breach of contract claim. Apple raises three arguments: (1) Plaintiffs lack Article III  
19 standing for injunctive relief; (2) the FAL and UCL claims seek equitable relief even though the  
20 breach of contract claim provides an adequate remedy at law; and (3) the FAL and UCL claims  
21 also fail because Plaintiffs have inadequately plead reliance on Apple’s alleged misrepresentations.

22 The Court begins its analysis with Apple’s argument that Plaintiffs lack Article III standing  
23 for injunctive relief. *See Friery v. Los Angeles Unified Sch. Dist.*, 448 F.3d 1146, 1148 (9th Cir.  
24 2006) (“As standing implicates Article III limitations on our power to decide a case, we must  
25 address it before proceeding to the merits.”). The Court then addresses Apple’s argument that the  
26 FAL and UCL claims must be dismissed because Plaintiffs have an adequate remedy at law.  
27 Because that argument warrants dismissal of Plaintiff’s FAL and UCL claims, the Court need not

1 reach Apple’s last argument.

2 **A. Plaintiffs have Article III standing for injunctive relief under *Davidson*.**

3 Apple first argues that Plaintiffs lack Article III standing because they cannot show a  
4 likelihood of future injury. *See* Mot. at 6–8. “[A] suit brought by a plaintiff without Article III  
5 standing is not a ‘case or controversy,’ and an Article III federal court therefore lacks subject  
6 matter jurisdiction over the suit.” *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004).  
7 “[T]he irreducible constitutional minimum of [Article III] standing contains three elements:”  
8 (1) an injury in fact (2) that is fairly traceable to the challenged conduct of the defendant, and (3)  
9 that is likely to be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504  
10 U.S. 555, 560–61 (1992). “The party invoking federal jurisdiction bears the burden of  
11 establishing” Article III standing. *Id.* at 561. “At the pleading stage, general factual allegations of  
12 injury resulting from the defendant’s conduct may suffice, for on a motion to dismiss we presume  
13 that general allegations embrace those specific facts that are necessary to support the claim.” *Id.*  
14 (quotation marks and internal alterations omitted). “In a class action, standing is satisfied if at least  
15 one named plaintiff meets the requirements.” *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985  
16 (9th Cir. 2007) (citation omitted).

17 Apple’s argument is best construed as a facial attack whereby “the allegations contained in  
18 a complaint are insufficient on their face to invoke federal jurisdiction.” *Safe Air for Everyone*,  
19 373 F.3d at 1039. A court “resolves a facial attack as it would a motion to dismiss under Rule  
20 12(b)(6): Accepting the plaintiff’s allegations as true and drawing all reasonable inferences in the  
21 plaintiff’s favor, the court determines whether the allegations are sufficient as a legal matter to  
22 invoke the court’s jurisdiction.” *Leite*, 749 F.3d at 1121.

23 Specifically, Apple argues that Plaintiffs lack standing to seek injunctive relief because  
24 they “cannot establish with sufficient likelihood that they will again be harmed in a similar way.”  
25 Mot. at 7. The Court previously agreed with a similar argument and so dismissed Plaintiffs’ prayer  
26 for injunctive relief with leave to amend. *See* ECF No. 34 at 13–15. The Court held that “[w]ithout  
27 alleging that Plaintiffs are currently *paid iCloud subscribers*—as opposed to merely utilizing the

1 free five GB of iCloud storage—Plaintiffs have not met their burden of establishing an injury that  
 2 is ‘*certainly impending*.’” *Id.* at 15 (emphasis in original) (citation omitted) (quoting *Davidson v.*  
 3 *Kimberly-Clark Corporation*, 889 F.3d 956, 966 (9th Cir.), *cert. denied*, 139 S. Ct. 640 (2018)).  
 4 However, unlike the original complaint, the FAC unambiguously alleges that “[b]oth Plaintiffs  
 5 continue to be paying subscribers to iCloud and expect to continue being so for the immediate  
 6 foreseeable future.” FAC ¶ 50. Plaintiffs thus have cured the standing defect identified in the  
 7 Court’s prior order. Accordingly, Apple’s standing argument is now on shakier ground.

8 Apple’s argument proceeds in two steps. To start, Apple asserts that the foundational Ninth  
 9 Circuit precedent *Davidson v. Kimberly-Clark Corporation* establishes only two categories of  
 10 future harm that “provide previously-deceived plaintiffs with standing to seek injunctive relief.”  
 11 Mot. at 8 (quoting at length 889 F.3d at 969–70). Apple then claims that Plaintiffs’ allegations fail  
 12 to “fit[] into either category of future harm” because “Plaintiffs allege they will continue to be paid  
 13 iCloud subscribers whether or not the allegedly misleading statements are corrected or the product  
 14 is changed.” *Id.*

15 Apple’s argument rests on a false premise. *Davidson* did not limit Article III standing to  
 16 two categories of future harm. Rather, the language from *Davidson* that Apple quotes “simply  
 17 offer[s] two illustrations of how a plaintiff who has learned the hard way that a company’s  
 18 statements were deceptive can have standing under Article III to enjoin the deceptive practice.”  
 19 *Milan v. Clif Bar & Co.*, No. 18-CV-02354-JD, 2020 WL 5760450, at \*2 (N.D. Cal. Sept. 28,  
 20 2020). The language Apple quotes from *Davidson* is the following:

21 We hold that a previously deceived consumer may have standing to seek an  
 22 injunction against false advertising or labeling, even though the consumer now  
 23 knows or suspects that the advertising was false at the time of the original purchase,  
 24 because the consumer may suffer an “actual and imminent, not conjectural or  
 25 hypothetical” threat of future harm. Knowledge that the advertisement or label was  
 26 false in the past does not equate to knowledge that it will remain false in the  
 27 future. [*Illustration #1*] In some cases, the threat of future harm may be  
 28 the consumer’s plausible allegations that she will be unable to rely on the product’s  
 advertising or labeling in the future, and so will not purchase the product although  
 she would like to. [*Illustration #2*] In other cases, the threat of future harm may be

1 the consumer’s plausible allegations that she might purchase the product in the  
2 future, despite the fact it was once marred by false advertising or labeling, as  
she may reasonably, but incorrectly, assume the product was improved.

3 *Davidson*, 889 F.3d at 969–70 (footnote and citations omitted); *accord* Mot. at 7 (quoting same);  
4 Reply at 2 (quoting same). “This is not the teaching of a two-test method, as [Apple] would have  
5 it.” *Milan*, 2020 WL 5760450, at \*2. *Davidson* “did not set out any definitive tests”—only  
6 illustrative examples of standing. *Id.* Thus, Apple’s reliance on the quoted language above is  
7 misplaced.

8 Other language in *Davidson* controls here. Specifically, *Davidson* analyzed several district  
9 court decisions with approval to “resolve [a] district court split in favor of plaintiffs seeking  
10 injunctive relief.” *Davidson*, 889 F.3d at 969. Two of those decisions foreclose Apple’s standing  
11 argument.

12 The first decision is *Weidenhamer v. Expedia, Inc.*, No. 14-CV-01239-RAJ, 2015 WL  
13 1292978 (W.D. Wash. Mar. 23, 2015). *Davidson* approvingly explained *Weidenhamer*’s holding as  
14 follows: “plaintiff ‘is entitled to rely on the statements made in [defendant’s] ad, even if he  
15 previously learned that some of those statements were false or deceptive,’” so long as “the plaintiff  
16 had adequately alleged that he likely would continue to be [defendant’s] customer.” *Davidson*, 889  
17 F.3d at 968–69 (quoting *Weidenhamer*, 2015 WL 1292978, at \*5). As *Weidenhamer* explained, it  
18 was immaterial that plaintiff had “no plausible allegation that he will be fooled if he encounters”  
19 the same allegedly deceptive statements in the future. *Weidenhamer*, 2015 WL 1292978, at \*5.

20 So too here. For purposes of Article III standing, Plaintiffs are entitled to rely on Apple’s  
21 “continue[d] [] represent[ation] that Apple is the provider of the iCloud cloud storage service,”  
22 even though Plaintiffs allege that “the cloud storage of iCloud subscribers’ data actually is  
23 provided by non-Apple third parties.” Opp’n at 2 (quoting FAC ¶ 50). Similarly, like the  
24 *Weidenhamer* plaintiff, Plaintiffs here allege that they likely will continue to be defendant’s  
25 customers. *See* FAC ¶ 50 (“Both Plaintiffs continue to be paying subscribers to iCloud and expect  
26 to continue being so for the immediate foreseeable future, given that they have concerns as to the  
27 fate of their already stored data if they were to terminate their paying subscriptions.”); *accord id.*

1 ¶ 67 (alleging same). Thus, Plaintiffs have standing under *Weidenhamer* and *Davidson*'s  
2 interpretation of it.

3 The other decision that forecloses Apple's standing argument is *Richardson v. L'Oreal*  
4 *USA, Inc.*, 991 F. Supp. 2d 181 (D.D.C. 2013). *Davidson* summarized *Richardson*'s holding as  
5 similar to *Weidenhamer*'s: "'named plaintiffs, knowledgeable about the misrepresentations, are  
6 likely to suffer future harm in the absence of an injunction,' because they will be unable 'to rely on  
7 the misleading label with any confidence' and 'will have no way of knowing' whether defendants  
8 'boosted the label's veracity.'" *Davidson*, 889 F.3d at 969 (quoting *Richardson*, 991 F. Supp. 2d at  
9 194–95). *Richardson* explained that the likelihood of future harm arises where "a consumer might  
10 rationally continue to purchase the product for any number of reasons—cost, effectiveness,  
11 convenience, brand loyalty, and so on." *Richardson*, 991 F. Supp. 2d at 194.

12 Here too, Plaintiffs allege they will continue to purchase defendant's product. *See* FAC  
13 ¶ 50 ("Both Plaintiffs continue to be paying subscribers to iCloud and expect to continue being so  
14 for the immediate foreseeable future . . ."). Plaintiffs' rational reason for doing so is that "they  
15 have concerns as to the fate of their already stored data if they were to terminate their paying  
16 subscriptions." *Id.* Plaintiffs thus "pray for an injunction to, *inter alia*, prevent Apple from  
17 continuing to disseminate these false and misleading statements [about Apple providing iCloud]  
18 and to unambiguously and accurately detail where Plaintiffs' and class members' iCloud content  
19 and data is stored and which entity is providing any part of the iCloud storage service." FAC ¶ 67.

20 Apple fails to cite—let alone distinguish—*Davidson*'s approval of *Weidenhamer* and  
21 *Richardson*. Instead, Apple relies on two pre-*Davidson* cases to argue that Plaintiffs' data storage  
22 concerns cannot support Plaintiffs' standing for injunctive relief. *See* Opp'n at 8 (discussing  
23 cases). Apple argues that the cases show that Plaintiffs' alleged injury is "not directly related to the  
24 injunctive relief [Plaintiffs] seek." *Id.* (quoting *Krommenhock v. Post Foods, LLC*, 255 F. Supp. 3d  
25 938, 968 (N.D. Cal. 2017)). Both cases are inapposite.

26 Apple first relies on *Krommenhock v. Post Foods*. There, unlike here, plaintiffs did not  
27 allege that they would continue to purchase defendant's products (Post's cereals). Rather, the

1 *Krommenhock* plaintiffs alleged “they would be willing to purchase Post’s cereals in the future” *on*  
 2 *two conditions*: (1) if the cereals were “accurately described”; and (2) “the cereals were either  
 3 (i) reformulated to reduce added sugar, or (ii) priced lower so they could be purchased as a treat.”  
 4 *Krommenhock*, 255 F. Supp. 3d at 968. Given these conditions on future purchases, the  
 5 *Krommenhock* plaintiffs were relatively unlikely to buy allegedly mislabeled products again—and  
 6 thus relatively unlikely to suffer future injuries that would support injunctive relief.

7 Moreover, the *Krommenhock* plaintiffs sought injunctive relief that met only the first  
 8 condition for plaintiffs to resume purchases. That relief was “to force defendant to stop using the  
 9 health and wellness claims on products with excessive added sugar.” *Id.* Thus, the desired relief  
 10 (relabeling) would have completely failed to redress the *Krommenhock* plaintiffs’ concern with the  
 11 cereal’s formulation or price.

12 Here, by contrast, Plaintiffs seek injunctive relief that redresses—at least in part—  
 13 Plaintiffs’ “concerns as to the fate of their already stored data if they were to terminate their paying  
 14 subscriptions.” FAC ¶ 50. An injunction would “unambiguously and accurately detail where  
 15 Plaintiffs’ and class members’ iCloud content and data is stored and which entity is providing any  
 16 part of the iCloud storage service.” FAC ¶ 67. Under *Davidson*, this injunction is sufficiently  
 17 related to Plaintiffs’ alleged harms. The injunction would allow Plaintiffs to understand whether  
 18 they can rely on Apple’s iCloud contract “with any confidence.” *Davidson*, 889 F.3d at 969  
 19 (quoting *Richardson*, 991 F. Supp. 2d at 194–95). In other words, Plaintiffs would *no longer*  
 20 “‘have no way of knowing’ whether defendant[] ‘boosted the [iCloud contract’s] veracity.’” *Id.*  
 21 (quoting same).

22 Apple next relies on this Court’s decision in *Hadley v. Kellogg Sales Co.*, 243 F. Supp. 3d  
 23 1074, 1108 (N.D. Cal. 2017). In *Hadley*, this Court held that plaintiff lacked standing for  
 24 injunctive relief because “[p]laintiff solely alleges that [p]laintiff would *consider* making such a  
 25 purchase if the price were to decrease to a level that is ‘appropriate.’” *Id.* (emphasis in original).  
 26 This Court reasoned that “the Court has no control over whether the price of a product will be  
 27 changed to an ‘appropriate’ level. Indeed, [p]laintiff fails to even allege what price for

1 [d]efendant’s products would be ‘appropriate.’” *Id.*

2 Here, Plaintiffs do not merely “consider” making future purchases. Rather, “Plaintiffs  
3 continue to be paying subscribers to iCloud and expect to continue being so for the immediate  
4 foreseeable future.” FAC ¶ 50. Accordingly, *Davidson* again controls. Plaintiffs who have  
5 “adequately alleged that [they] likely would continue to be [Apple’s] customer[s]” are “entitled to  
6 rely on the statements made in the [iCloud contract], even if [they] previously learned that some of  
7 those statements were false or deceptive.” *Davidson*, 889 F.3d at 968–69 (quoting *Weidenhamer*,  
8 2015 WL 1292978, at \*5).

9 In sum, Plaintiffs have Article III standing to seek injunctive relief. Accordingly, the Court  
10 DENIES Apple’s motion to dismiss Plaintiffs’ prayer for injunctive relief.

11 **B. The Court must dismiss Plaintiffs’ FAL and UCL claims because Plaintiffs have an  
12 adequate remedy at law.**

13 The Court turns next to Apple’s argument that the FAL and UCL claims fail because the  
14 claims seek equitable relief while Plaintiffs have an adequate remedy at law. The Court agrees.

15 As the California Supreme Court recently confirmed, “civil causes of action authorized by  
16 the UCL and FAL must properly be considered equitable, rather than legal, in nature.” *Nationwide  
17 Biweekly Admin., Inc. v. Superior Court of Alameda Cty.*, 462 P.3d 461, 488 (Cal. 2020). “[A]  
18 federal court’s equitable authority remains cabined to the traditional powers exercised by English  
19 courts of equity, even for claims arising under state law.” *Sonner v. Premier Nutrition Corp.*, 971  
20 F.3d 834, 840 (9th Cir. 2020). One limit on a federal court’s equitable powers is that “equitable  
21 relief is not appropriate where an adequate remedy exists at law.” *Schroeder v. United States*, 569  
22 F.3d 956, 963 (9th Cir. 2009). This holds true even “in a diversity action where state law allow[s]  
23 equitable relief.” *Sonner*, 971 F.3d at 842 (citing *Barranco v. 3D Sys. Corp.*, 952 F.3d 1122, 1129  
24 (9th Cir. 2020)). Accordingly, a federal court cannot grant relief under the UCL or FAL if Plaintiffs  
25 have an adequate remedy at law.

26 Monetary damages are a remedy at law. *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388,  
27 391 (2006); *see also, e.g., Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1396 (9th Cir. 1984)

1 (reversing injunction because breach of contract damages provided an adequate remedy at law).  
 2 Moreover, Plaintiffs concede that the FAL and UCL claims are “‘duplicative’ of Plaintiffs’ breach  
 3 of contract claim for money damages.” Opp’n at 9. Plaintiffs also concede that the “UCL and FAL  
 4 claims for equitable relief [are] based on the same factual predicate.” *Id.* at 11. Plaintiffs’ only  
 5 argument, then, is that the Ninth Circuit has supposedly held that “the mere fact that an equitable  
 6 claim arises from the same facts as a claim at law, thereby rendering it ‘duplicative,’ does not  
 7 provide a basis for dismissal.” *Id.* For support, Plaintiffs cite the Ninth Circuit’s decisions in  
 8 *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753 (9th Cir. 2015), and *Davidson*. See Opp’n at 9–  
 9 11.

10 Plaintiffs are incorrect. Neither *Astiana* nor *Davidson* repudiated the “basic doctrine of  
 11 equity jurisprudence that courts of equity should not act when the moving party has an adequate  
 12 remedy at law.” *Schroeder*, 569 F.3d at 963 (quoting *Mort v. United States*, 86 F.3d 890, 892 (9th  
 13 Cir. 1996)). *Astiana* held that “unjust enrichment claims may be pleaded in the alternative in  
 14 quasi-contract.” *Brazil v. Dole Packaged Foods, LLC*, 660 F. App’x 531, 535 (9th Cir. 2016)  
 15 (citing *Astiana*, 783 F.3d at 762–63). That holding is irrelevant to whether Plaintiffs can seek relief  
 16 under the FAL and UCL, see FAC ¶¶ 69 & 75, despite having an adequate remedy at law.

17 *Davidson*, for its part, had nothing to do with the viability of equitable claims despite the  
 18 availability of adequate remedies at law. See Reply at 7 n.8 (correctly noting same). *Davidson* was  
 19 simply about Article III standing. *Davidson* “h[e]ld that a previously deceived consumer may have  
 20 standing to seek an injunction against false advertising or labeling, even though the consumer now  
 21 knows or suspects that the advertising was false at the time of the original purchase, because the  
 22 consumer may suffer an ‘actual and imminent, not conjectural or hypothetical’ threat of future  
 23 harm.” *Davidson*, 889 F.3d at 969 (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493  
 24 (2009)). Thus, with *Astiana* and *Davidson* offering no support, Plaintiffs’ only argument against  
 25 dismissal of the FAL and UCL claims fails.

26 Indeed, a recent Ninth Circuit ruling confirms that this Court must dismiss Plaintiffs’ FAL  
 27 and UCL claims. In *Sonner v. Premier Nutrition Corp.*, the Ninth Circuit “h[e]ld that the

1 traditional principles governing equitable remedies in federal courts, including the requisite  
 2 inadequacy of legal remedies, apply when a party requests restitution under the UCL and  
 3 [California’s Consumers Legal Remedies Act] in a diversity action.” 971 F.3d at 844. The Ninth  
 4 Circuit reasoned that “[i]t has been a fundamental principle for well over a century that state law  
 5 cannot expand or limit a federal court’s equitable authority.” *Id.* at 841. The Ninth Circuit thus  
 6 affirmed the dismissal of plaintiff’s UCL claim because plaintiff “fail[ed] to demonstrate that she  
 7 lacks an adequate legal remedy.” *Id.* at 845.

8 Similarly here, Plaintiffs seek relief under the FAL and UCL, which “must properly be  
 9 considered equitable, rather than legal, in nature.” *Nationwide Biweekly Admin., Inc.*, 462 P.3d at  
 10 488. Plaintiffs also fail to demonstrate that they lack an adequate legal remedy. To the contrary,  
 11 Plaintiffs concede that their FAL and UCL claims are “duplicative” of their “breach of contract  
 12 claim for money damages.” Opp’n at 9; *accord* Reply at 6 (noting concession).

13 Underscoring this concession is the FAC itself. The FAC fails to allege that legal remedies  
 14 are inadequate or that Plaintiffs suffered irreparable injury. This failure also requires dismissal of  
 15 Plaintiffs’ FAL and UCL claims. “A complaint seeking equitable relief fail[s]” where “it d[oes] not  
 16 plead ‘the basic requisites of the issuance of equitable relief’” including “the inadequacy of  
 17 remedies at law.” *Sonner*, 971 F.3d at 844 (quoting *O’Shea v. Littleton*, 414 U.S. 488, 502 (1974)).  
 18 Accordingly, the Court must dismiss Plaintiffs’ FAL and UCL claims, which necessarily seek  
 19 equitable relief, because Plaintiffs’ breach of contract claim provides an adequate remedy at law.

20 Moreover, the Court dismisses Plaintiffs’ FAL and UCL claims with prejudice. A district  
 21 court may exercise “its ‘particularly broad’ discretion [to] deny[] leave to amend” where  
 22 amendment “(1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue  
 23 delay in litigation; or (4) is futile.” *Id.* at 845 (quoting *AmerisourceBergen Corp. v. Dialysist W.,*  
 24 *Inc.*, 465 F.3d 946, 951 (9th Cir. 2006)) (affirming dismissal with prejudice of equitable claims  
 25 because plaintiff had adequate remedy at law). Here, amendment would be futile. Plaintiffs have  
 26 been warned that they have adequate remedies at law that preclude FAL and UCL claims.  
 27 Specifically, Apple’s prior motion to dismiss also argued at length that “Plaintiffs’ claims under the

1 FAL and UCL (all prongs) [] fail because they are equitable claims and plaintiffs have an adequate  
 2 remedy at law.” ECF No. 15 at 25–26 (capitalization altered); *accord id.* at 10 (highlighting  
 3 argument in introduction to motion to dismiss). Thus, in dismissing Plaintiff’s FAL and UCL  
 4 claims the first time, the Court warned that “failure to cure deficiencies identified herein *or in*  
 5 *Apple’s motion to dismiss* will result in dismissal of the deficient claims with prejudice.” ECF No.  
 6 34 at 26 (emphasis added).

7 Even so, Plaintiffs have failed to cure the deficiency identified in Apple’s prior motion to  
 8 dismiss. Plaintiffs have instead insisted “that the mere fact that an equitable claim arises from the  
 9 same facts as a claim at law, thereby rendering it ‘duplicative,’ does not provide a basis for  
 10 dismissal.” Opp’n at 9; *see also Mariscal v. Graco, Inc.*, 52 F. Supp. 3d at 984 (“Plaintiff failed to  
 11 address [] arguments in his opposition brief, and therefore conceded these claims.”). Plaintiffs are  
 12 incorrect. Accordingly, like other courts evaluating FAL and UCL claims where plaintiffs have an  
 13 adequate remedy at law, this Court dismisses Plaintiffs’ FAL and UCL claims with prejudice. *See,*  
 14 *e.g., Rhynes v. Stryker Corp.*, No. 10-CV-05619, 2011 WL 2149095, at \*4 (N.D. Cal. May 31,  
 15 2011) (dismissing UCL claim with prejudice on first motion to dismiss because plaintiffs have an  
 16 adequate remedy at law); *Gomez v. Jelly Belly Candy Co.*, No. 17-CV-00575, 2017 WL 8941167,  
 17 at \*1 (C.D. Cal. Aug. 18, 2017) (same for FAL and UCL claims on second motion to dismiss).<sup>2</sup>

#### 18 **IV. CONCLUSION**

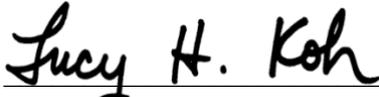
19 For the foregoing reasons, the Court GRANTS in part and DENIES in part Apple’s motion  
 20 to dismiss. Specifically, the Court GRANTS Apple’s motion to dismiss Plaintiffs’ FAL and UCL  
 21 claims with prejudice. The Court DENIES Apple’s motion to dismiss Plaintiffs’ prayer for  
 22 injunctive relief.

23 **IT IS SO ORDERED.**

24 \_\_\_\_\_  
 25 <sup>2</sup> Plaintiffs’ Opposition unfairly attacks Apple and Apple’s counsel. Among other things, the  
 26 Opposition suggests that Plaintiffs may move for sanctions, *see* Opp’n at 11–12, and baselessly  
 27 asserts that “Apple has failed to cite binding or current caselaw, misdirected the Court and  
 28 Plaintiffs to outdated authorities, and filed a motion that has no basis.” Opp’n at 1. The instant  
 Order explains why the Court disagrees.

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Dated: November 17, 2020



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LUCY H. KOH  
United States District Judge

United States District Court  
Northern District of California